

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 743 of 1989

For Approval and Signature:

Hon'ble MR.JUSTICE A.N.DIVECHA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? Yes
 2. To be referred to the Reporter or not? Yes

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3. Whether Their Lordships wish to see the fair copy of the judgement? No
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? No
5. Whether it is to be circulated to the Civil Judge?

No

SURENDRA PARSHOTTAM PATANI

Versus

COMPETENT AUTHORITY AND ADDL COLLECTOR

Appearance:

Shri Mehul S. Shah, Advocate, for the Petitioner
Shri A.G. Uraizee, Assistant Government Pleader,
for the Respondents

CORAM : MR.JUSTICE A.N.DIVECHA

Date of decision: 27/08/96

ORAL JUDGEMENT

The order passed by the Competent Authority at Rajkot (respondent No.1 herein) on 7th November 1985 under sec. 21(2) of the Urban Land (Ceiling and Regulation) Act, 1976 (the Act for brief) as affirmed in appeal by the order passed by the Urban Land Tribunal at Ahmedabad (respondent No.2 herein) on 21st April 1988 in

Appeal No. Rajkot-101 of 1985 is under challenge in this petition under art. 226 of the Constitution of India. By his impugned order, respondent No.1 cancelled the permission granted to the petitioner under sec. 21(1) of the Act with respect to two parcels of land bearing plots Nos. 16 and 17 from survey No. 92/93(part) situated at village Raiya within the urban agglomeration of Rajkot (the disputed lands for convenience).

2. The facts giving rise to this petition move in a narrow compass. The petitioner was granted permission under sec. 21(1) of the Act with respect to the disputed lands by the order passed by respondent No. 1 on 27th March 1980 on certain terms and conditions. One condition was regarding completion of the construction activity within 5 years from the date of the order. It appears that, pursuant thereto, the petitioner approached the Rajkot Urban Development Authority (the RUDA for convenience) for approval of the construction plans and the necessary building permission. It appears that the RUDA approved the plans and granted the building permission with modification in the plans. The plans approved by the RUDA were not in accordance with the plans approved in the scheme for granting the permission under sec. 21(1) of the Act. It appears that the petitioner thereupon made an application as early as on 27th August 1981 for revision of the scheme on the basis of which the permission under sec. 21(1) of the Act came to be granted. That application remained pending in the office of respondent No.1 for quite some time. It appears that with a view to completing the construction work within the stipulated time-limit of 5 years, the petitioner went ahead with the construction work in accordance with the plans approved by the RUDA. It appears that the petitioner also moved the concerned Mamlatdar for release of cement by his application made on 14th December 1982. It appears that enough quota of cement was not released in favour of the petitioner. The petitioner could not complete the construction work within the stipulated time-limit of 5 years. Thereupon respondent No.1 issued one show-cause notice on 16th September 1985 calling upon the petitioner to show cause why the permission granted under sec. 21(1) of the Act should not be cancelled. Its copy is at Annexure A to this petition. The petitioner filed his reply thereto on 8th October 1985. Its copy is at Annexure B to this petition. Thereafter, by the order passed on 7th November 1985, respondent No.1 cancelled the permission granted earlier under sec. 21(1) of the Act. Its copy is at Annexure D to this petition. The aggrieved petitioner carried the matter in appeal before respondent

No.2 under sec. 33 of the Act. A copy of the memo of appeal is at Annexure C to this petition. It came to be registered as Appeal No. Rajkot-101 of 1985. By the order passed on 21st April 1988 in the aforesaid appeal, respondent No.2 dismissed it. Its copy is at Annexure E to this petition. The aggrieved petitioner has thereupon approached this Court by means of this petition under art. 226 of the Constitution of India for questioning the correctness of the order at Annexure D to this petition as affirmed in appeal by the appellate order at Annexure E to this petition.

3. The permission granted earlier by the order passed under sec. 21(1) of the Act has been cancelled by the impugned orders mainly on the ground that the construction was not completed within the stipulated time-limit of 5 years. In its ruling in the case of Suvarnaben wd/o Thakorlal Gordhandas and another v. The Competent Authority and Additional Collector (ULC) and another reported in AIR 1996 Gujarat 13 this Court has held that the condition regarding completion of the construction work within the stipulated time-limit of 5 years is directory and not mandatory. In its ruling in the case of Givndlal Chunilal Dalvadi v. State of Gujarat and others reported in 1994(1) Gujarat Current Decisions 526, this Court has held that the time-limit for completion of the construction work can be extended by this Court in exercise of its extra-ordinary jurisdiction under art. 226 of the Constitution of India by imposing suitable penalty on the petitioner.

4. Learned Assistant Government Pleader Shri Uraizee for the respondents has brought to my notice another ground on which the permission under sec. 21(1) of the Act has come to be cancelled. It has been stated that the petitioner was guilty of breach of condition No.9 of the order granting permission under sec. 21(1) of the Act. Thereby he was required not to deviate or to make departure from the plan sanction by the specified authority. As pointed out hereinabove, the RUDA did not approve the plans submitted by the petitioner for approval and the necessary building permission in accordance with the plans on the basis of which the scheme was sanctioned by the specified authority resulting in the grant of permission under sec. 21(1) of the Act. The RUDA modified the plans for the purpose. As pointed out hereinabove, the petitioner moved respondent No.1 as early as in August 1981 in revision of the scheme in accordance with the plans sanctioned by the RUDA. It remained pending for nearly 3 years. With a view to completing construction work within the

stipulated time-limit of 5 years, the petitioner went ahead with the construction work in accordance with the plans sanctioned by the RUDA. In view of this fact-situation, I think no serious view deserves to be taken with respect to this matter for the alleged breach of condition No.9 attached to the permission under sec. 21(1) of the Act.

5. The problem can be examined from another angle and the same result will ensue. The avowed object behind this piece of legislation relating to urban land ceiling is inter alia to provide housing accommodation to weaker sections of the society. That avowed object is embodied in the scheme of sec. 21 of the Act. What the petitioner has done by going ahead with the construction activity according to the plans sanctioned by the RUDA after waiting for some period and after moving the application for revision of the scheme in August 1981 is to see that the construction work was completed as expeditiously as possible. It cannot be gainsaid that passage of time would always result into escalation of the cost of construction. The petitioner need not be blamed for going ahead with the construction work in anticipation of revision of the scheme with a view to completing it within the stipulated time-limit of 5 years.

6. The petitioner has also stated in his reply at Annexure B to this petition that he applied for supply of cement to the concerned Mamlatdar and he did not get timely supply of cement. The delay in completion of the construction work within the stipulated time-limit of 5 years was not thus deliberate and it could be attributed to circumstances beyond his control.

7. In view of my aforesaid discussion, I am of the opinion that the impugned order at Annexure D to this petition as affirmed in appeal by the appellate order at Annexure E to this petition deserves to be quashed and set aside on condition of payment of fine at the rate of Rs. 1000 for each smaller dwelling unit and Rs. 2000 for each larger dwelling unit. The petitioner deserves to be directed to carry on the construction work and to complete it within one year from the date of revision of the scheme by respondent No. 1. Respondent No.1 deserves to be directed to dispose of the application for revision of the scheme as expeditiously as possible preferably within two months from the date of payment of fine by or on behalf of the petitioner.

8. In the result, this petition is accepted. The

order passed by the Competent Authority at Rajkot (respondent No.1 herein) on 7th November 1985 at Annexure D to this petition as affirmed in appeal by the appellate order passed by the Urban Land Tribunal at Ahmedabad on 21st April 1988 in Appeal No. Rajkot-101 of 1985 at Annexure E to this petition is quashed and set aside on condition of payment of Rs. 1000 each for 6 smaller dwelling units and Rs. 2000 for 2 bigger dwelling units as penalty. The petitioner is directed to pay this amount by means of an account payee cheque drawn in the name of the Secretary, Revenue Department, Government of Gujarat at Gandhinagar to be handed over to respondent No.1 within one month from today. On payment of this amount, respondent No.1 will take up the application for revision of the scheme and will dispose it of within two months therefrom. The petitioner will be required to complete the construction work within one year from the date of revision of the scheme by respondent No.1 It will be open to the petitioner to produce a copy of this judgment before respondent No.1 for prompt action in the matter. Rule is accordingly made absolute to the aforesaid extent with no order as to costs.
